

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In Re: NEW YORK CITY ASBESTOS LITIGATION

Hon. Joan Madden
(Part 11)

This Document Relates To:

Index No. 114120-06

CHRISTIAN HOLINKA,

Plaintiff

-against-

A. W. CHESTERTON COMPANY, et al.,

**AFFIRMATION OF
KENNETH S. WEINBERG, Ph.D.**

Defendants.

KENNETH S. WEINBERG, being of full age, affirms under penalty of perjury as follows:

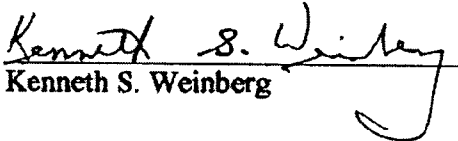
1. I am the President and Principal Consultant of Safdoc systems, LLC, located in Stoughton, MA. I earned a Master of Science in Environmental Health and Radiation Health Physics from the University of Pittsburgh Graduate School of Public Health in 1970. I also earned a Ph.D. in Biochemistry and Pathology in 1979 from Boston University, Graduate School of Medical and Dental Sciences. I have worked as an independent consultant specializing in environmental health, safety and toxicology since 2000. A copy of my curriculum vitae and publications are attached as Exhibit A.

2. I have worked in both clinical and research laboratories, spanning a course of twenty years. My work experiences are outlined in curriculum vitae and discussed in detail in my July 30, 2007 report, which is attached as Exhibit B.

3. I am familiar with Bunsen burner pads. The pads are wire mesh squares and typically have a circular, heat-resistant cores. I have worked with asbestos-containing and non-asbestos containing versions of Bunsen burner pads, and they often appear identical.

4. I am familiar with the heat-resistant mittens used in laboratories. The mittens are similar to oven mitts and typically are used to handle hot glassware. I have worked with asbestos and non-asbestos versions of heat-resistant mittens, and they often appear identical.

5. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Kenneth S. Weinberg

Dated: August 21, 2007

Exhibit A

Curriculum Vitae

Part I. General Information

Name: Kenneth S. Weinberg, Ph.D.

Home Address: 20 Thompson Court
Stoughton, MA. 02072

Telephone: 781-341-4267

Office Telephone: 781-341-3893

E-mail: SafdocSys@aol.com **Fax:** 781-341-3893

Place of Birth: Brookline, MA.

Education

1979 Ph.D. Boston University Graduate School of Arts and Sciences, Division
of Medical and Dental Sciences (Biochemistry and Pathology)

1970 M.Sc. University of Pittsburgh Graduate School of Public Health,
(Environmental Health and Radiation Health Physics)

1969 A.B. Boston University, Boston, MA. (Biology)

Postdoctoral Training

1984-1986 Research Associate in Medicine and Pathology, Dana-Farber
Cancer Institute and Harvard Medical School, Boston, MA.

1982-1983 Assistant Professor of Medicine, Member Special and Scientific
Research Staff, Tufts University School of Medicine and New
England Medical Center Hospital, Boston, MA.

1981-1982 Parker B. Francis Foundation Fellow in Pulmonary Medicine,
New England Medical Center Hospital, Boston, MA.

Postdoctoral Training(cont'd)

- 1978- 1981 National Institutes of Health Postdoctoral Fellow, New England Medical Center Hospital, Boston, MA.
- 1973-1978 Research Assistant, Pulmonary Pathology, Mallory Institute of Pathology/Boston University School of Medicine, Boston, MA.
- 1971-1973 Research technician, Atherosclerosis Research, Boston University School of Medicine, Boston, MA.
- 1970-1971 Licensed Nursing Home Administrator, Alliance Medical Inns, Inc. Stratford, CT.

Professional Experience

- 2000 - Independent Consultant , Safdoc Systems, LLC., Stoughton, MA
- 1990-2000 Director of Safety, Massachusetts General Hospital, Boston, MA.
- 1989-1990 Acting Director of Safety, Massachusetts General Hospital, Boston, MA.
- 1988-1989 Assistant Safety Officer, Massachusetts General Hospital, Boston, MA.
- 1987-1988 Industrial Hygienist, V.A. Medical Center, Brockton/West Roxbury, MA.
- 1987 Manager, Toxikon Environmental Laboratory, Woburn, MA.

Licensure/Certification

- June, 1997 Certified Healthcare Environmental Manager
- April, 1998 Registered Professional Industrial Hygienist
- Dec., 2000 National Registry of Safety Professionals
- May, 2002 Certified Toxics Use Reduction Planner

Awards/Honors

- June, 2001 Safety Professional of the Year, Health Care Division, American Society of Safety Engineers

Professional Societies

American Society of Safety Engineers, Professional Member
American Society of Safety Engineers, Massachusetts Chapter
Massachusetts Safety Council
American Industrial Hygiene Association
American Industrial Hygiene Association, New England Chapter
American Conference of Governmental Industrial Hygienists
American Chemical Society
American Chemical Society Division of Health and Safety
National Fire Protection Association
Affiliated Harvard Hospitals Health and Safety Committee
Toxics Use Reduction Planners Association
American Biological Safety Association
National Association of Safety Professionals

Editorial/Advisory Boards

2005	Editorial Advisory Board, Medical Environmental Weekly, HcPro
2005	Editorial Advisory , Safety Talks, Bongarde Publications
2002-	Advisory Board, National Toxic Mold Coalition
2001-2002	Science Advisory Panel, Massachusetts Department of Environmental Protection, "Review and Recommendations for DEP's Interim risk evaluation Guidance Document for Solid Waste Facility Site Assessment and Permitting."
2001-	Boston University Biology Department Alumni Advisory Council
2001-	Advisory Board, Briefings on Hospital Safety
2000- 2001	Editorial Board, J. Healthcare Safety Compliance and Infection Control
1996-1998	American Society of Safety Engineers, Administrator, Health Care Division
1996-	Bureau of National Affairs Editorial Advisory Board for Healthcare Facilities Guide
1996	Member, Toxic Use Reduction Task Force, Chair, Committee on Education and Training

Editorial/Advisory Boards (cont'd)

- 1995 American Society of Safety Engineers, Assistant Administrator
Health Care Division
- 1994-1995 Hospital Mercury Task Force, Source Identification Committee
- 1994-1997 Member, Boston Chamber of Commerce, Committee on Energy
And Environment
- 1994- Advisory Board, Massachusetts Safety Council, Health and Safety
Institute
- 1994 American Society of Safety Engineers, Secretary, Health Care
Division
- 1991- Member Board of Directors, Massachusetts Safety Council

Continuing Education

Internal Auditing of an Environmental Management System, March 2007,
Sponsored by UMass Lowell, Toxics Use Reduction institute

Auditing an Environmental Management System, March, 2006 Sponsored by
UMass Lowell Toxics Use Reduction Institute

Hazard Control Technologies in Healthcare: Collaborative strategies for the next
Millennium, August, 1999

Annual refresher in Hazardous Waste operations and emergency response

OSHA Training Program in Ergonomics, New Hampshire, March, 1998

NIOSH Respirator Training Course

Respirator Training and Refresher Course, July 1997

Ninth Annual Toxicology Symposium: Practical Application of Risk Assessment
for the Industrial Hygienist, American Industrial Hygiene Association, 1994

Seminar in Effective Communications for Health and Safety Professionals,
ASSE, New Orleans, LA, 1997

Continuing Education (cont'd)

Frontline Leadership: Techniques for the Modern Manager, Massachusetts General Hospital, 1993

Research Laboratory Safety Seminars, Howard Hughes Research Institute, Bethesda, MD. 1991

Professional Safety Management Seminar, Massachusetts Safety Council, 1992
Environmental Pollution: Strategies for Reduction and Control, Silver City, MD. 1992

Indoor Air Quality Update '89, Washington, DC.

EPA Asbestos Training Course for Supervisors and Monitors

Training Program in Hazard Communication, Veteran's Administration

Industrial Hygiene Course, Harvard University School of Public Health

Cytogenetics, Manhattan College of Mt. St. Vincent, 1984

Postdoctoral course in Pulmonary Pathology, University of Vermont, 1979

Part II. Research, Teaching and Clinical Contributions

- 2007 - Adjunct Professor, Department of Biology, Massasoit Community College, Brockton, MA
- 2002 Adjunct Faculty, Roger Williams University, Metropolitan College, Providence, RI. Course: "Hazardous Materials Safety Management"
- 2001 Revised "2001 TURA Reporting Package Chemical List", Department of Environmental Protection, May 2002" under contract With Toxics Use Reduction Institute, University of Massachusetts, Lowell
- 1992 Lecturer, Massachusetts Safety Council, Health and Safety Institute
- 1983-1985 Lecturer, General Pathology, Northeastern University, College of Pharmacy and Allied Health Professions
- 1981 Lecturer, General Pathology, Sergeant College, Boston University

Part III. Publications

1. Weinberg KS. A study of the uptake and accumulation of Plutonium-239 by the fathead minnow, *Pimphelas Promelas promelas* (M.Sc. Thesis). University of Pittsburgh Graduate School of Public Health, 1970.
2. Weinberg, K.S. Early cellular response in elastase-induce lung injury (Ph.D. Thesis). Boston University Graduate School of Arts and Sciences, 1979.
3. Marom, Z, Weinberg KS, Fanburg, B.L. Effect of bleomycin on collagenolytic activity of the rat alveolar macrophage. 1980. *Am Rev Respir Dis* 121:859-867.
4. Weinberg, K.S, Hayes ,J.A. Elastase-induced emphysema: Asynchronous bronchial, alveolar, and endothelial cell proliferation during the acute response to injury. 1982, *J Pathol* (London) 136:253-264.
5. Weinberg KS, Douglas WHJ, MacName DR, Lanzillo JJ, Fanburg BL. Angiotensin-1-converting enzyme localization on cultured fibroblasts by immunofluorescence. 1982. *In Vitro* 18(4):400-406.
6. Keogh EM, Callow AD, Connolly RJ, Weinberg KS, Aalberg JJ, O'Donnell TF Jr. Healing pattern of small caliber dacron grafts in the baboon: An animal model for the study of vascular prosthesis. January 1984. *J Biomed Materials Res*.
7. Weinberg, K.S. Chapter 19, " Safety in Comprehensive Perioperative Nursing, BJ Gruendemann, B Fernsebner, Eds, Jones and Bartlett, 1995
8. Weinberg ,K.S, Seth ,A.K. Relationship of Health and Safety Management and Utilities. In *Facilities Engineering and Management Handbook*: PR Smith, AK Seth, R Wessel, DL Stymiest, WL Porter and M Neitlich, Eds. McGraw-Hill, 2001
9. Weinberg, K.S. Is Your Facility's Emergency Management Plan Up To Date? American Society of Safety Engineers, Healthcare Practice Specialty, Spring, 2001
10. Weinberg, K.S. JCAHO Requirements for Pre-Construction Risk Assessment. "HealthBeat", American Society of Safety Engineers, Healthcare Specialty Practice Newsletter, Summer, 2002.

Books

1. Weinberg, K.S. "The Hospital Safety Director's Handbook" Opus Communications, Inc., June 2002.
2. Weinberg, K.S., Content Development Advisor, MacArthur, S.A., Contributing Editor: "Health Care Contractors' Handbook: An Introduction to Working Construction in a Medical Facility" HCPro, Inc., Marblehead, MA 2003.
3. Davis, J.L. & Weinberg, K.S. Indoor Air Quality During Construction: A Guide to Best engineering Practices and Regulatory Compliance. Opus Communications, Inc. June, 2003.
4. Weinberg, K.S. "The hospital Safety Director's Handbook, Second Edition" HCPro, Inc., November, 2003.
5. Weinberg, K.S. "Surviving OSHA: How to Avoid, Manage and Respond to Healthcare Inspections." HcPro, Inc., Marblehead, MA , November 2004

Abstracts/Presentations:

1. Weinberg ,K.S, Hayes ,J.A. Necrotizing pulmonary arterial lesions in elastase-induced emphysema. 1978. *Fed Proc* 37:715.
2. Deneke,S.M., Weinberg, K.S., Fanburg, B.L., Diethyldithiocarbamate (DDC) induction of lung glucose-6-phosphate dehydrogenase activity and protection from O₂ toxicity in rats. 1979. *Am Rev Respir Dis* 119:302.
3. Marom, Z, Weinberg ,K.S., Fanburg, B.L. Effects of bleomycin on collagenolytic activity of the rat pulmonary macrophage. 1979. *Am Rev Respir Dis* 119:334.
4. Weinberg ,K.S., Polsky-Cynkin, R, Douglas ,W. Dell'Orco, R, Fanburg, B.L. Angiotensin-1-converting enzyme localization on fibroblasts by immunofluorescence. 1980. *J Histochem Cytochem* 28:613.
5. Weinberg, K.S., Hayes ,J.A. Mural pulmonary arterial thrombosis induced by elastase. 1980. *Clin Res* 28:433A.
6. Weinberg, K.S., Deneke, S.M., Fanburg, B.L. Pathology of pulmonary oxygen toxicity in cysteine-deprived rats. 1980. *Fed Proc* 42:503 (No. 1239).

7. Kisby, L.E., Weinberg, K.S. Localization of Factor VIII antigen on endothelial cells of bovine pulp and inferior alveolar artery using peroxidase antiperoxidase method. Table Clinic Presentation, American Academy of Pedodontics, Kansas City, May 28-31, 1983.
8. Deneke, S.M., Lynch, B.A., Weinberg, K.S., Fanburg, B.L. Depletion of rat lung glutathione and increased oxygen toxicity by intraperitoneal diethylmaleate (DEM) injection. Presentation, APCR Meeting, Eastern Section, Cambridge, July, 1984. *Clin Res*
9. Bernal, S.D., Stahel, R.A., Elias, A., Weinberg, K.S., Speak, J. Membrane and cytoskeletal composition of lung cancers. Lung Cancer Conference, Toronto, Canada, 1985.
10. Weinberg, K.S. Pollution Prevention in the Laboratory: Waste minimization in hospital research laboratories. Boston, 1993.
11. Weinberg, K.S., Speelman, J., Szobcak, S. TB Respirator Program: Application in a large urban hospital. American Society of Safety Engineers, Baltimore, June, 1999.
12. Capaccio, R., Kelly, M., Weinberg, K.S. Mercury reduction through process control. American Society of Healthcare Engineers, Philadelphia, PA., July, 1999.
13. Weinberg, K.S., Loomis, S., Seth A.K. Indoor Air Quality: A Team Approach to Prevention and Resolution. Healthcare Conference 99 Sponsored by ACGIH Colorado Springs, August, 1999.
14. Weinberg, K.S. Editorial: J Healthcare Safety Compliance and Infection Control. February, 2000.
15. Szobcak, S., Speelman, J., Weinberg, K.S. Hazardous material contamination emergencies. American Society of Safety Engineers, Orlando, June, 2000.
16. Weinberg, K.S. Healthcare Safety 2001: Are Hospitals a Safe Place to Work? Keynote Address, Baystate Medical Center Safety Retreat, Springfield, MA, April 19, 2001.
17. Sobczak, S.C., Speelman, J., Weinberg, K.S.: FEMA Emergency Management Planning and Vulnerability Analysis Process. ASSE Professional Development conference, pre-conference Special Seminar, June 9, 2001, Anaheim, CA

18. Weinberg, K.S., Yang, C., Hansen, W. Risk Analysis Before Construction. Telephone Teaching Conference, sponsored by HcPro, March 13, 2002
19. Weinberg, K.S. A Primer on Anthrax. 81st Massachusetts Safety & Health Conference & Exhibition, Sturbridge, MA, March, 26, 2002
20. Weinberg, K.S. Revision of "2001 TURA Reporting Package Chemical List, Department of Environmental Protection, May 2002. Under contract Toxics Use Reduction Institute, University of Massachusetts, Lowell
21. Weinberg, K.S. Prevention of Mold in Healthcare Construction. Invited presentation at the Northeast Regional Professional Development Conference of the American Society of Safety engineers, December 3 & 4, 2002, Crowne Plaza Hotel, Warwick, RI

Exhibit B

Safdoc Systems, LLC.

Kenneth S. Weinberg, Ph.D.
20 Thompson Court
Stoughton, MA 02072
Phone/Fax: (781) 341-3893

e-mail: SafdocSys@aol.com

web: www.SAFDOCSYSTEMS.com

July 30, 2007

Kristy Kulina Lyons
Hoagland, Longo, Moran, Dunst & Doukas, LLP
40 Paterson Street, P.O. Box 480
New Brunswick, NJ 08903

Carol Tempesta, Esq.
Marks, O'Neill, O'Brien & Courtney, PC
530 Saw Mill River Road
Elmsford, NY 10523

Gregory A. Dadika, Esq.
Reed Smith, LLP
Princeton Forrestal Village
136 Main Street, Suite 250
Princeton, NJ 08540-7839

Timothy Fraser, Esq.
Drinker Biddle & Reath LLP
500 Campus Drive
Florham Park, NJ 07932-1047

Re: Holinka v. A.W. Chesterton et al.

Dear Counselors:

Thank you for allowing me to review the above referenced matter. Below is a statement of my qualifications, as well as my opinions regarding this matter, and the bases for these opinions.

Summary of Qualifications

I am Kenneth S. Weinberg, Ph.D., the President and Principal Consultant of Safdoc Systems, LLC, located in Stoughton, MA. I earned a Master of Science in Environmental Health and Radiation Health Physics from the University of Pittsburgh Graduate School of Public Health in 1970. I also earned a Ph.D. in Biochemistry and Pathology in 1979 from Boston University, Graduate School of Medical and Dental Sciences. I have worked

as an independent consultant specializing in environmental health, safety and toxicology since 2000. A copy of my CV and Publications are attached.

In addition to the aforementioned educational credentials, I worked in both clinical and research laboratories, spanning a course of over twenty years. I started my career as a research technician in a college chemistry laboratory, which was followed by a stint as the night technician in a clinical microbiology laboratory at Children's Hospital, in Boston, MA. This occurred while I was an undergraduate. At the same time, I also worked and volunteered as a technician in the clinical pathology laboratory at what is now Brigham and Women's Hospital in Boston. Following this, I performed laboratory research in radiation and environmental health physics at the University of Pittsburgh Graduate School of Public Health. This was followed by work as a technician in a research pathology laboratory at Boston University School of Medicine. At the end of that period, I returned to Graduate School for my doctorate, and worked in a pathology laboratory both as a technician and graduate student at BU School of Medicine. Following the awarding of my doctorate, I held positions as a Postdoctoral Fellow, Assistant Professor of Medicine and Research Scientist at various institutions in the Boston area, including Tufts New England Medical Center, and the Dana Farber Cancer Institute. Each of these positions involved both laboratory research and increasing responsibility for leadership in the laboratory. Later on, I worked as the director of a commercial environmental laboratory that included a number of subgroups within the laboratory, including analytical and basic chemistry groups, which also involved the analysis of soil samples. Finally, I took on the roll of Industrial Hygienist at the Brockton/West Roxbury V.A. Medical Center, and then as Director of Safety at Massachusetts General Hospital. In these latter two positions, I played a daily role in the issues surrounding environmental health and safety in the clinical and research laboratories at each of these respective facilities. At Massachusetts General Hospital, in particular, I spent several hours each week observing work practices and procedures in both the clinical and research laboratories to better assist practitioners in achieving a safe working environment.

Statement of Opinions

I hold the following opinions to a reasonable degree of laboratory certainty:

1. Asbestos heating pads for Bunsen burners were durable and were not routinely or frequently disposed of and they did not, even after extensive use, display signs of aging through the appearance of white dust or powder.
2. Asbestos heat resistant mittens typically were durable, did not significantly degrade when used in typical laboratory circumstances, such as handling hot glassware, and, thus, were not routinely or frequently disposed of.
3. It was, and still is, the custom and practice in the laboratories to utilize clamps and tongs, not mittens, to handle hot glassware at the bench top.
4. It was, and still is, the custom and practice in laboratories to use either heating baths or heating mantles to heat materials in flasks or beakers. The latter were

particularly common in chemistry laboratories. Efforts were made to limit, to the extent possible, the wide use of Bunsen burners.

5. It was, and still is, the custom and practice in laboratories for researchers who become more senior to be less involved in the day to day conduct of experiments and to be more involved in planning, analysis and review of experimental data, as well as in the preparation of manuscripts for publication.
6. It was, and still is, the custom and practice for laboratory workers to maintain a clean work environment to protect themselves from exposure to potentially harmful materials and to protect their work from potential contamination.
7. Based on the methods sections included in Dr. Holinka's publications that were provided to me, including those produced prior to 1989, it does not appear that heating of chemicals or materials played a significant role in the research conducted.

Bases of Opinion

My statements and opinions are based on my personal experience working in various types of research and clinical laboratories, as well as undergraduate student laboratories. I also base my opinions on the observations I made as an industrial hygienist and director of safety at the VA Medical Centers in Brockton and West Roxbury, MA, and Massachusetts General Hospital, Respectively.

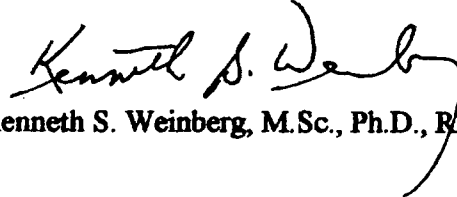
I also considered the following information when formulating my opinions:

1. Asbestos is a durable material capable of withstanding high amounts of heat for long periods of time. Asbestos is the best heat retardant material known to man.
2. Asbestos heat resistant mittens were clumsy and not appropriate for the care that must be taken when handling equipment, such as test tubes, beakers, or crucibles.
3. Clamps and tongs were, and still are, typically used to handle test tubes, beakers or crucibles that have been heated
4. The primary use of asbestos heat resistant mittens in the laboratory was to remove hot objects from autoclaves, drying ovens, and kilns.
5. In the course of work in the chemistry lab or other labs where heating of substances are necessary, it was, and still is more common to see the use of heating mantles, that is long trays that can contain and hold the beakers or flasks that need to be heated. These heating mantles were typically placed inside of fume hoods to reduce emissions of gases and any potential harmful materials into the general air of the laboratory. Heating mantles were used because the practice of heating chemicals with open flames is potentially hazardous; the goal of the laboratory is to limit the use as well as location of open flames to the greatest extent possible.
6. Culture media was, and still is, generally heated in warming baths, not over Bunsen burner flames.
7. The heat from Bunsen burners is difficult to control, and as a result, this method for heating is not optimal and may result in the destruction of important chemicals. In addition, heating chemicals using Bunsen burners can be dangerous

as it may lead to rapid release of hazardous materials, and may put workers at risk of exposure to fire or explosions.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kenneth S. Weinberg". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Kenneth S. Weinberg, M.Sc., Ph.D., RPIH

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NYCAL
I.A.S. Part 39

Index No. 114120-06

IN RE: NEW YORK CITY
ASBESTOS LITIGATION

CHRISTIAN F. HOLINKA,

Plaintiff,

-against-

A.W. CHESTERTON COMPANY, et al.,

Defendants.

**AFFIRMATION OF
KENNETH S. WEINBERG, M.D.**

DRINKER BIDDLE & REATH LLP
140 Broadway, 39th Floor
New York, New York 10005-1116
(212) 248-3140

Attorneys for Defendant, BAXTER HEALTHCARE, INC.